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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/405,088	09/27/1999	SAMI USKELA	017.37498X00	9108

20457 7590 02/11/2003

ANTONELLI TERRY STOUT AND KRAUS
SUITE 1800
1300 NORTH SEVENTEENTH STREET
ARLINGTON, VA 22209

EXAMINER

NGUYEN, BINH AN DUC

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 02/11/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

#14

Interview Summary	Application No.	Applicant(s)	
	09/405,088	USKELA ET AL.	
	Examiner	Art Unit	
	S. Thomas Hughes	3714	

All participants (applicant, applicant's representative, PTO personnel):

- (1) S. Thomas Hughes (SPE, Art Unit 3714). (3) _____
(2) Donald Stout. (4) _____

Date of Interview: 04 February 2003.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____.

Claim(s) discussed: None.

Identification of prior art discussed: None.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☒ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

* Attachment:
Corrected Interview Summary of 11/7/01



S. THOMAS HUGHES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form or in an attachment to the Form, the examiner should check the appropriate box at the bottom of the Form which informs the applicant that the submission of a separate record of the substance of the interview as a supplement to the Form is not required.

It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: SPE Hughes called Mr. Stout to inform him that the application was abandoned since applicant had not filed a complete written statement of the reasons presented at the interview of 11/7/01 as warranting favorable action. SPE Hughes referred Mr. Stout to 37 CFR 1.133(b) which provides authority for this position. SPE Hughes also pointed out to Mr. Stout that the above rule also states that an interview does not remove the necessity for reply to an office action and that examiner Harrison did not check the box in the interview summary form stating that it is not necessary for applicant to provide a separate record of the substance of the interview. Mr. Stout pointed out that the statement made by the primary examiner in the 11/7/01 interview did remove the necessity for applicant to reply to the office action of 7/6/01. Mr. Stout maintained that the PTO should issue a new office action in accordance with the interview of 11/7/01. SPE Hughes said that he was without authority to issue such an action and that the application is abandoned. Mr. Stout will file a petition regarding the above in short order. It is noted here that Mr. Stout did file a status request on February 11, 2002 (copy faxed to SPE Hughes on 1/28/03), but that this status request was filed outside the period for reply to the final rejection. It is also noted here that SPE Hughes realized that the last sentence of the interview summary of 11/7/01 appeared to be incomplete. SPE Hughes received a complete print out of the interview summary form dated 11/7/01 from Examiner Harrison on 2/3/03 which does include a complete final sentence in further support of Mr. Stout's position.

Applicant's representative contacted the primary examiner of the file to request formal review of the file and a discussion of the content of the final rejection. Applicant noted that the same rejection had been given against most of his claims in the final rejection, yet none of his arguments had been responded to. Further, his arguments presented in the paper submitted after final had not been addressed. He felt at a loss in understanding the examiners position. Upon review of the file, the primary examiner agreed that the rejection turned on interpretation of the James reference, and the office's position was not clear on the record. Furthermore, the primary agreed applicant's arguments deserved consideration and discussion on the record. And upon review of the file, the primary noted to applicant that she was aware of prior art not yet made of record which was relevant to the disposition of the file: US Pat 5,933,811 to Angles et al., at least. The primary agreed that prosecution should be reopened in the file in order to consider this new art, and that the interview would be considered a response from applicant. Accordingly, prosecution will be reopened and an new office action issued on the file.

Printed from J. Harrison's Computer
(Action Writer) on 2/3/03.



S. THOMAS HUGHES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700